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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/065,307	10/02/2002	Marten Jon DeVlieger	APP02-10	7685
25759	7590	08/13/2004	EXAMINER	
JOHN J. ELNITSKI, JR. 225 A SNOWBIRD LANE BELLEFONTE, PA 16823			THANH, QUANG D	
			ART UNIT	PAPER NUMBER
			3764	2

DATE MAILED: 08/13/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

**Application No.**

10/065,307

**Applicant(s)**

DEVLIEGER, MARTEN JON

**Examiner**

Quang D. Thanh

**Art Unit**

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 02 October 2002.
- 2a) ☐ This action is **FINAL**.      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-20 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1 and 6-9 is/are rejected.
- 7) ☒ Claim(s) 2-5 and 10-20 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_.
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_.

**DETAILED ACTION**

***Claim Rejections - 35 USC § 102***

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this

Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

2. Claims 1 and 6-9 are rejected under 35 U.S.C. 102(b) as being anticipated by Breeding (5,716,131).

3. Re claim 1, Breeding discloses a chest vibrating device 20 (fig. 7) comprising: a frame 40/50 to fit around an upper body of a user (fig. 1); shoulder pads (portion of pad 82 near 84 in fig. 7) extending from said frame to rest said frame on shoulders of the user; a chest pad (front portion of 82 near the chest in fig. 7) extending from a front inside of said frame towards a chest of the user; at least one back pad (back portion of 82 near 85 in fig. 7) extending from a rear inside of said frame towards a back of the user; and a vibrating unit 30/110 (fig. 1) attached to said frame which produces a vibration that travels from said vibrating unit through said frame onto said chest pad and at least one back pad. Although Breeding's pad 82 is used as a dampening system to substantially reduce the vibrations transferred from the vibrating unit 30 to the user 22 during operation (col. 5, lines 59-62), it does not eliminate 100% the vibrations and thus some vibrations would still be transferred to the pad 82, therefore would comprehend the claimed language as stated above.

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4. Re claims 6-9, vibrating unit 30 is a housing and a vibrator 31 mounted inside said housing (fig.4); said vibrator is a motor 31 and an offset weight 122A connected to and rotated by said motor (fig. 8); said chest pad is one piece 82 and configured to fit a male user (fig. 7); said chest pad includes an upper pad and a lower pad (upper and lower portions of the chest pad 82 in fig. 7), said upper and lower pads connected to a pad bar (portion of frame 50 near 52), said pad bar 52 connected to said frame 50, and said upper pad, lower pad and pad bar configured to fit a female user.

***Allowable Subject Matter***

5. Claims 2-5 and 10-20 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

***Conclusion***

6. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Van Brunt '785 discloses a mechanical chest wall oscillator. Stubbs '250 discloses a vibratory garment. Hailey '328 discloses an electric massager. Mulligan et al. (5,261,394) disclose a percussive aid for the treatment of lung disease. Golfarb '050 discloses a massaging garment with vibrators. Arbisi et al. '967 disclose an electro-magnetic impact massager.

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Any inquiry concerning this communication or earlier communications from the examiner should be directed to Quang D. Thanh whose telephone number is (703) 605-4354. The examiner can normally be reached on Monday-Thursday & alternate Friday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Nick Lucchesi can be reached on (703) 308-2698. The fax phone number for the organization where this application or proceeding is assigned is (703) 872-9306 for regular and After-Final communications.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Quang D. Thanh  
Patent Examiner  
Art Unit 3764  
August 5, 2004

Qt

  
Danton D. DeMille  
Primary Examiner